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September 25, 2015

Ronnie Pawelko
General Counsel
Family Planning Advocates of New York State
194 Washington Avenue, Suite 620
Albany, New York 12210

Dear Ms. Pawelko:

On July 13, 2015, Family Planning Advocates of New York State ("FPA") submitted an application to the Joint Commission on Public Ethics ("Commission") for an exemption from the Source of Funding Disclosure requirements contained in Legislative Law Article 1-A §§1-h(c)(4), 1-j(c)(4) and 19 NYCRR Part 938. The statute provides that whether to grant an exemption is a discretionary determination of the Commission. The Commission considered FPA's application at its August 4, 2015 meeting. The Commissioners reviewed the application and supporting evidence prior to the meeting, and evaluated the application under the relevant legal standard during the public session. FPA's application for exemption failed to receive a vote of the majority of the Commissioners, therefore, the application was denied. Pursuant to Part 938.5(d), the Commission hereby sets forth the reasons and basis for the denial of the application.

By way of background, the Public Integrity Reform Act of 2011 ("PIRA") (Chapter 399, Laws of 2011) amended Legislative Law Article 1-A by enacting unprecedented disclosure requirements that, through increased transparency, better inform the public about efforts to influence governmental decision making. The source of funding disclosure provisions of the law require lobbyists who lobby on their own behalf and clients of lobbyists, who devote substantial resources to lobbying activity in New York State, to make publicly available each source of funding over \$5,000 for such lobbying. The purpose of these statutory provisions is to provide the public with information about those who seek to influence the government.

While under both the statute and the regulations entities are permitted to apply for exemptions from disclosure, FPA was required to show, by clear and convincing evidence, that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its source(s) of funding will cause harm, threats, harassment or reprisals to the source or individuals or property affiliated with the source. 19 NYCRR Part 938.4; *see also* Legislative Law §§1-h(c)(4), 1-j(c)(4). It should be noted that the Commission enacted these regulations to conform to legislative intent seeking the broadest interpretation in favor of disclosure (19 NYCRR 938.1). FPA sought an exemption pursuant to Part 938.4(b), which is available for organizations that have exempt status under Section 501(c)(4) of the Internal Revenue Code of the United States.

Part 938.4 sets out a list of five nonexclusive factors the Commission will consider when determining whether an applicant has made a clear and convincing showing of a substantial likelihood of harm, threats, harassment or reprisals to the applicant's source(s) of funding if disclosure were required. It is the Commission's view that unless an applicant makes a persuasive showing under multiple factors it is unlikely to prevail.

In reviewing the FPA application the Commission considered the number and severity of the instances identified in the application and found that FPA failed to provide sufficient evidence in support of its exemption request. First, there was little evidence of: (1) events that took place both recently and in New York; or (2) information directly related to FPA itself; rather it is based primarily on instances involving Planned Parenthood organizations (many of which are located outside the State of New York). While FPA provides statistics about events dating back to 1977, there is very little information about recent incidents. For example, the state by state statistical evidence prepared by the National Abortion Federation ("NAF") does not include the last four years. To the extent FPA provided updated statistical evidence from NAF and the Feminist Majority Foundation, it is not broken down by state. Further, some information provided by FPA is not identified geographically or by date.

Second, the vast majority of information submitted involves dissemination of anti-abortion literature and protests, rather than actual harm, threats, harassment or reprisals. To illustrate, four of the seven incidents on pages two and three of FPA's application involve anti-abortion materials being left in or near health centers in New York. While the remaining incidents identified in the application itself include allegations of "threatening comments" or "harassing" messages, few specifics are provided about the alleged threats or harassment.

Finally, the application has limited information, if any, related to *supporters* of Planned Parenthood, FPA, and similar organizations. Many supporters attend rallies or publicly identify themselves through social media or other venues, and FPA has not been able to demonstrate that these supporters have experienced any adverse effect from being associated with entities similar to FPA. For example, on January 26, 2015, hundreds of reproductive health care advocates attended a rally, the Family Planning Advocates of New York Annual Day of Action, in the lobby of the Legislative Office Building in Albany, New York. (<http://www.familyplanningadvocates.org/2015/01/family-planning-advocates-of-nys-annual-day-of-action-monday-january-26-2>.) The Commission finds that FPA's application fails to establish a nexus between the information it offered in support of its application and any supporter, donor

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or source of funding experiencing harm, threats, harassment or reprisals. Consequently, the Commission concludes that FPA's application lacks the requisite evidence to overcome its burden.

While the Commission recognizes that FPA's primary activities involve areas of public concern (19 NYCRR Part 938.4(b)), it finds that FPA seems to simply rely on that fact alone for its assertion that it is eligible for an exemption. The burden is on the applicant to establish through "clear and convincing evidence" a "substantial likelihood of harm." This high standard for an exemption is in keeping with the purpose, "...to better inform the public about efforts to influence governmental decision making through increased transparency." (19 NYCRR Part 938.1(4)). FPA has failed to meet its burden, therefore, the application is denied.

Sincerely,

Commissioners

Hon. Joseph Covello

Marvin E. Jacob

Seymour Knox, IV

Gary J. Lavine

Hon. Mary Lou Rath

David A. Renzi

Michael A. Romeo, Sr.

George H. Weissman